The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte THOMAS LICH and ROLF-JUERGEN RECKNAGEL

Appeal No. 2006-2862
Application No. 10/600,853
Technology Center 3600

ON BRIEF

Decided: November 27, 2006

Before LEVY, HORNER, and FETTING, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1 through 19, which are all of the claims pending in this application.

We AFFIRM IN PART.

BACKGROUND

The appellants' invention relates to a system for triggering a restraining device. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

> 1. A system for triggering at least one restraining device comprising:
>
> at least one non-pedestrian-impact sensor for transmitting a first signal;
>
> at least one pedestrian-impact sensor for transmitting a second signal; and
>
> a processor for receiving the first and second signals, the processor being adapted to trigger the at least one restraining device as a function of a combination of the first and second signals,
>
> the at least one non-pedestrian-impact sensor includes an acceleration sensor.

PRIOR ART

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Yokota	6,463,372 B1	October 8, 2002
Mattes	6,487,482 B1	November 26, 2002

REJECTIONS

Claims 1-10[1], 12 and 14-19 stand rejected under 35 U.S.C. § 102(e) as anticipated by Yokota.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as obvious over Yokota and Mattes.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as obvious over Yokota.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the examiner's answer (mailed April 13, 2006) for the reasoning in support of the rejection, and to appellants' brief (filed February 10, 2006) and reply brief (filed May 8, 2006) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1-10, 12 and 14-19 rejected under 35 U.S.C. § 102(e) as anticipated by Yokota.

We begin with the language of the claims. The general rule is that terms in the claim are to be given their ordinary and accustomed meaning. *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610

(Fed. Cir. 1999). In the USPTO, claims are construed giving their broadest reasonable interpretation.

> [T]he Board is required to use a different standard for construing claims than that used by district courts. We have held that it is error for the Board to "appl[y] the mode of claim interpretation that is used by courts in litigation, when interpreting the claims of issued patents in connection with determinations of infringement and validity." *In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320 (Fed. Cir. 1989)*; accord *In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023 (Fed. Cir. 1997)* ("It would be inconsistent with the role assigned to the PTO in issuing a patent to require it to interpret claims in the same manner as judges who, post-issuance, operate under the assumption the patent is valid."). Instead, as we explained above, the PTO is obligated to give claims their broadest reasonable interpretation during examination.

In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1364, 70 U.S.P.Q.2d 1827, 1830 (Fed. Cir. 2004).

The significant issue in this appeal is whether Yokota discloses an impact sensor. The appellants argue it does not [Br. 5]. Yokota describes sensors that anticipate an impact. That is, they "detect an unavoidable collision during vehicle travel just prior to the collision." [col. 1, lines 13-14]. Thus the question squarely is whether such sensors are "impact sensors." We recognize that the appellants have referred to sensors that similarly detect imminent impact in the specification at p. 1 and 2, referring to them as "pre-crash sensors." However, we note that there is no lexicographic definition of an impact sensor in the disclosure, nor is there any unambiguous description of pre-crash sensors that clearly make them exclusive of the more broad term "impact sensor." Thus, we must construe the term "impact sensor" according to its ordinary and customary meaning, which is apparent from

[1] The Answer and Final Rejection both omit claim 9 from the range of claims in the statutory basis recitation of the rejection, but claim 9 is included among the claims rejected within the analysis of the rejection and is therefore treated as part of the rejection.

the two words in the phrase, *viz.* a sensor for impacts. This construction contains no temporal characteristic, i.e. such a sensing my be imminent, concurrent, or subsequent. The phrase is sufficiently broad to encompass all of these embodiments. Thus, the sensors for imminent impact in Yokota are "impact sensors." Therefore, we find the appellants' arguments to be unpersuasive as to claim 1.

As to claims 2, 6, 7 and 10, Yokota describes crash severity at col. 8 lines 59-66, side pedestrian impact sensor (IOR or IOL) in fig. 7 a and b, a non-pedestrian sensor in a control device in fig. 2, and a deformation pressure sensor at col. 11 lines 25-45 and therefore, we find the appellants' arguments to be unpersuasive.

As to claims 5 and 17, we find no teaching or suggestion of impact sensors in the rear bumper or across an entire side in Yokota and therefore, we find the examiner's arguments to be unpersuasive.

Claims 3, 4, 8, 9, 12, 14, 15, 16 and 19 are not separately argued and therefore we sustain the rejection of these claims for the same reasons articulated above for claim 1. Accordingly we sustain the examiner's rejection of claims 1-4, 6-10, 12 and 14-16 and 19 and do not sustain the examiner's rejection of claims 5 and 17 rejected under 35 U.S.C. § 102(e) as anticipated by Yokota.

Claim 11 rejected under 35 U.S.C. § 103(a) as obvious over Yokota and Mattes.

The appellants argue that the art fails to show an acceleration sensor that is a switch [Br. p. 10]. Mattes shows an acceleration sensor that is a micromechanical sensor at col. 2 lines 58-61. Therefore, we find the appellants' arguments to be unpersuasive.

Accordingly we sustain the examiner's rejection of claim 11 rejected under 35 U.S.C. § 103(a) as obvious over Yokota and Mattes.

Claim 13 rejected under 35 U.S.C. § 103(a) as obvious over Yokota.

The appellants argue the patentability of claim 13 for the same reasons as claim 6, which we find unpersuasive for the reasons stated above. Accordingly we sustain the examiner's rejection of claim 13 rejected under 35 U.S.C. § 103(a) as obvious over Yokota.

CONCLUSION

To summarize,

- The rejection of claims 1-4, 6-10, 12 and 14-16 and 19 under 35 U.S.C. § 102(e) as anticipated by Yokota is sustained.
- The rejection of claims 5 and 17 under 35 U.S.C. § 102(e) as anticipated by Yokota is not sustained.
- The rejection of claim 11 under 35 U.S.C. § 103(a) as obvious over Yokota and Mattes is sustained.
- The rejection of claim 13 under 35 U.S.C. § 103(a) as obvious over Yokota is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED IN PART

STUART S. LEVY)
Administrative Patent Judge)
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LINDA E. HORNER) BOARD OF PATENT
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